

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT E. JACKSON,
Petitioner,

CASE NO. 2:07-cv-430
JUDGE FROST
MAGISTRATE JUDGE ABEL

v.

ERNIE MOORE, Warden,
Respondent.

OPINION AND ORDER

On June 2, 2008, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus be dismissed. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**.

Petitioner objects to the Magistrate Judge's recommendation of dismissal of his claim of ineffective assistance of counsel as procedurally defaulted. Petitioner contends that, liberally construing his pleadings, he fairly presented such claim to the Ohio Supreme Court. Petitioner also appears to assert, as cause for the procedural default of his claim that his sentence violated *Blakely v. Washington*, 542 U.S. 296 (2004), the denial of counsel on appeal.

Petitioner's objections are not well taken. Contrary to petitioner's contention here, even liberally construing his pleadings, the record does not reflect that petitioner raised a claim of ineffective assistance of counsel based upon his attorney's alleged failure to file a timely appeal after being requested to do so. Instead, petitioner asserted that he had been

denied the right to appeal because he was not properly notified of his right to appeal, denied due process when the appellate court dismissed his motion for delayed appeal without adequately reviewing the transcripts, and that his sentence violated *Blakely*. See *Exhibit 8 to Return of Writ*. Neither of the cases referred to by petitioner in support of his argument to the contrary persuade this Court otherwise. Additionally, petitioner's allegation of denial of counsel fails to establish cause for the procedural default of his claim that his sentence violates *Blakely* since, for the reasons discussed by the Magistrate Judge, the record reflects that petitioner's claim of denial of counsel lacks merit.

Pursuant to 28 U.S.C. §636(b), this Court has conducted a *de novo* review of the record. For the foregoing reasons and for reasons detailed in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
United States District Judge